



OPEN COMMUNITIES ALLIANCE

Testimony of Erin Boggs, Esq.
before the Housing Committee

February 28, 2022

**Written Testimony in Support of H.B. 6633,
An Act Concerning a Needs Assessment and Fair Share Plans for Municipalities
to Increase Affordable Housing**

Thank you to the leadership and members of the Housing Committee for the opportunity to testify. My name is Erin Boggs, and I am the Executive Director of Open Communities Alliance (OCA), a civil rights non-profit organization that works to address residential segregation and its impact. OCA is a proud member of the Steering Committee of Growing Together CT, a statewide consortium of organizations advocating for equitable investments and policies in under-resourced communities and expanded affordable housing choices in all parts of the state. In addition to zoning reform, we support a number of tenant protection measures and, through the Housing Growth Fund proposal, investments in municipalities that are creating housing.

While we support a number of the tenant protection bills and oppose bills weakening 8-30g that are on the agenda today, I am will focus my remarks on H.B. 6633, An Act Concerning a Needs Assessment and Fair Share Plans for Municipalities to Increase Affordable Housing, a proposal Open Communities Alliance supports. This proposal, modeled on an effective system in New Jersey, asks every town in Connecticut to plan and zone for its “fair share” of affordable housing. The fair share approach to planning and zoning is the right thing to do to address a range of social justice issues in Connecticut. It is also the smart thing to do to boost our economy and put our state on a more sustainable path.

The Cost of Housing. Housing - and housing segregation - has never been so expensive. Connecticut is one of the costliest places to live in the country - we have the 10th highest housing costs. For this reason, one might expect our economy to be bursting with high-quality jobs attracting workers from across the country. Instead, according to the Connecticut Business

and Industry Association, we have over 90,000 vacant jobs.¹ It's not a coincidence that Connecticut is also one of the most segregated states in the country.² Our broken local housing policies lead to segregation and economic stagnation - and we pay for it through the nose. Our economy cannot grow - our businesses cannot thrive - if workers don't have a place to live. In the CBIA's 2021 Survey of Connecticut Businesses, 79% of employers responded that it is difficult to find workers.³ It makes sense, then, that more employers said they would make a greater investment in employee retention than anything else. The state's business leaders see what is at stake here – their very ability to do business. Businesses need better housing policies across our state.

The Solution: Fair Share Planning and Zoning. H.B. 6633 would implement a new statewide housing policy framework based on an effective process in New Jersey.⁴ Fair Share puts municipalities in the driver's seat by empowering them to plan for their fair share of the regional need for affordable housing over a 10-year period, allowing families earning up to 80% of median income (or \$80,000 a year for a family of four) to access housing at reasonable cost. The approach also ensures that municipalities include room for housing that is missing from the market - housing at a range of costs all the way down to 30% (around \$30,000) and below, have two or more bedrooms, and include supportive services.

Fair Share in New Jersey. We've learned a lot from New Jersey's experience with its Fair Share system, which has been honed through trial and error over the past 50 years, to emerge as a system on the path to generate over 300,000 units of affordable and market rate housing.

This housing production in New Jersey has had a positive impact on its economy. The New Jersey suburbs of New York City have produced new housing at around three times the rate of their counterparts in the similar Connecticut suburbs.⁵ In the 2020 Census, New Jersey outpaced estimates of population growth by more than any other state in the country. This, while apart from a pandemic blip, Connecticut's growth has been flat.

The same kind of production in Connecticut would likely yield tens of billions of dollars in income for Connecticut residents and tens of billions in state and local tax revenues and attract

¹ CBIA, Worker Shortage Hampers 2022 Job Growth, 1/24/2023, available at <https://www.cbia.com/news/economy/worker-shortage-hampers-2022-job-growth/>

² There are a variety of measures of residential segregation. According to the Berkeley Center for Othering and Belonging, in 2020 Connecticut's three major metropolitan regions, Hartford, New Haven, and Bridgeport, are in the top 17% of most segregated out of 199 across the nation using the Divergence measure of segregation. More information is available here: <https://belonging.berkeley.edu/most-least-segregated-metro-regions-2020>.

³ Available at <https://www.cbia.com/wp-content/uploads/2021/09/2021-survey-ct-businesses.pdf>.

⁴ Bonnie Watson-Coleman, Affordable housing builds on a civil rights foundation to integrate N.J., New Jersey.com, July 26, 2018. Available at <https://www.nj.com/opinion/2018/07/legislature-must-build-on-strong-civil-rights-foun.html>.

⁵ See [https://mailchi.mp/planning.nyc.gov/november-2021-housing-production?e=\[UNIQID\]](https://mailchi.mp/planning.nyc.gov/november-2021-housing-production?e=[UNIQID]); see also [https://mailchi.mp/planning.nyc.gov/housingpolicyinterview?e=\[UNIQID\]](https://mailchi.mp/planning.nyc.gov/housingpolicyinterview?e=[UNIQID]).

new residents. More than that, it would set Connecticut up to be a great place to live for generations to come by providing housing options, attracting employers, reversing decades of outmigration, and encourage development strategies that are better for the environment.

Here is how fair share works. Very simply, the fair share approach generates an estimate of the need for affordable housing by regions, then allocates those regional needs to towns based on per capita median income, town wealth (in the form of its grand list), multifamily housing percentage, and poverty rate. Using these factors, town-specific goals can be generated that take local factors and imbalances into account, such as some municipalities hosting the bulk of the regions affordable housing needs and other towns hosting almost none.

Towns are then asked to plan and zone to achieve their fair share allocation in 10 years. Because greater input from a range of stakeholders is essential, the exact form and contents of those plans will be determined by the Office of Policy and Management with the option of consulting with experts and advocates, something we would strongly recommend.

HB 6633 includes an enforcement process, but only for municipalities that do not create effective plans. In a country that respects the rule of law like the United States, any public policy we truly care about includes some level of enforcement. It is fundamental to making our system work. Ensuring that municipalities plan and zone for reasonable levels of affordability is no different. It is important to emphasize, however, that Fair Share includes the ability for municipalities to comply by undertaking planning and rezoning that, if conforming to threshold requirements, is totally up to them to shape.

To provide additional details about the Fair Share Planning and Zoning proposal, I am attaching Open Communities Alliance's Fair Share Implementation Policy Paper of February 2023.

Correcting Misinformation

Groups opposed affordable housing are undermining their own credibility by spreading misinformation about Fair Share. I urge legislators not to fall for it. Here is what is untrue and true about Fair Share Planning and Zoning:

What Fair Share Planning and Zoning IS NOT

- Fair Share is not a radical override of local zoning: To the contrary, it is critical that residents of municipalities come together to plan how they will meet their fair share goal in creative ways that meet their vision, but in accordance with existing municipal

obligations to zone for diversity and affordability in the Zoning Enabling Act, CGS Sec. 8-2.

- Fair Share is not a requirement that towns themselves build housing: Fair Share is about municipalities ALLOWING a range of housing to be built in a way that is already required by the law.
- Fair Share is not “one size fits all” - in fact, it is just the opposite. Each town’s fair share goal is carefully calibrated to consider the town’s resources and what it has already done to generate affordable housing.
- Fair Share is not a policy to create only housing at the very lowest income levels. It does create deeply affordable housing, but it also generates housing that is affordable up to almost the average income for the state (e.g. \$80k for a family of four) and will produce thousands of units of less expensive market rate housing.
- Fair Share does not require municipalities to allow housing that is their Fair Share Allocation *plus* significant additional market rate units (some erroneous information puts that at 80% above the Fair Share Allocation number). There are a variety of strategies municipalities can employ to reach their Fair Share Goal. These can include 100% affordable developments, inclusionary developments with some deed-restricted affordable and some market rate units, conversion of existing housing and more.

What Fair Share Planning and Zoning IS

- Fair Share is a sensible data- and research-based strategy for generating the housing Connecticut needs over the next 10 years to be economically successful, provide housing for residents of all incomes, and offer housing choices in all kinds of cities and towns.
- In New Jersey, Fair Share has already created over 160,000 units of affordable and market rate housing and is on track to create another 150,000 over the next ten years.
- Fair Share is also a way to support Connecticut’s cities, which have, to their credit, hosted virtually all of the state’s affordable housing, but which are entitled to other investments (see some of Growing Together’s other proposals) and the return of a natural housing market - one in which residents have more high quality housing choices

in their neighborhoods and so are less likely to be beholden to unscrupulous landlords.

- Fair Share does include some sticks - default zoning and enforcement, but only if a town DOES NOT create an effective Fair Share Plan.
- For most towns in CT, if they have an effective Fair Share Plan, they will get a moratorium from the state's builder's remedy law, 8-30g in 2-5 years.
- Fair Share does align with the opinions of many residents of our state. Recently the results of an opinion poll were released that show strong support for Growing Together CT's proposed solutions, including solutions like Fair Share.
 - 71% of Connecticut respondents said they would support building more affordable housing for low and middle income families in their town.
 - 73% said there should be housing options in every town for residents of all incomes.
 - 61% said that when towns won't act to make housing more affordable, the state government should step in.

In conclusion, Fair Share is the right thing to do because in one fell swoop it allows Connecticut to take major strides in addressing its affordable housing and housing segregation crises and jumpstarts our economy, all while ensuring that towns remain in the planning and zoning driver's seat. The lack of housing affordable to a range of income types located in a balanced way across the state has Connecticut in a stranglehold. Fair Share will put us on a path to fix that – right social wrongs and strengthening the economy. It is the right thing and the smart thing to do for our state.

Technical Notes

We would further suggest three technical changes to the language of HB 6633:

- (1) At lines 263-264, add the following underlined language to avoid defendants raising ex post facto excuse for a zoning denials: “supported by sufficient evidence in the record compiled before such zoning authority and the defendant has demonstrated that...”
- (2) The Housing Committee could consider specifying the instances in which municipalities could raise defenses, as per page 18 of the attached Fair Share Implementation Policy Paper.

- (3) Throughout the bill, instead of requiring “deed restrictions” and similar terms, use the term “binding restriction” to avoid concerns that may arise as part of any financing or refinancing processes.



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Embracing Diversity to Strengthen Connecticut

FAIR SHARE IMPLEMENTATION POLICY PAPER



February 27, 2023

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Introduction

Fair Share Planning and Zoning is a commonsense policy to meaningfully expand housing options across Connecticut, boost the state's economy by billions of dollars, and begin to undo decades of segregation and disinvestment. Connecticut has some of the highest housing costs in the country; it's also one of the most segregated states. This dual housing crisis holds the state back and is part of the reason the state has between 90,000-100,000 unfilled jobs. Fair Share will create a more economically dynamic and equitable state for all of us.

The broad strokes of the Fair Share policy are based on a successful process in New Jersey and draws from those of other states – but it has been tailored specifically for Connecticut. This memo outlines what Fair Share is, explains how it will positively impact our state, explains how it will work on a practical level, and offers implementation recommendations.

1. What is Fair Share Planning & Zoning?

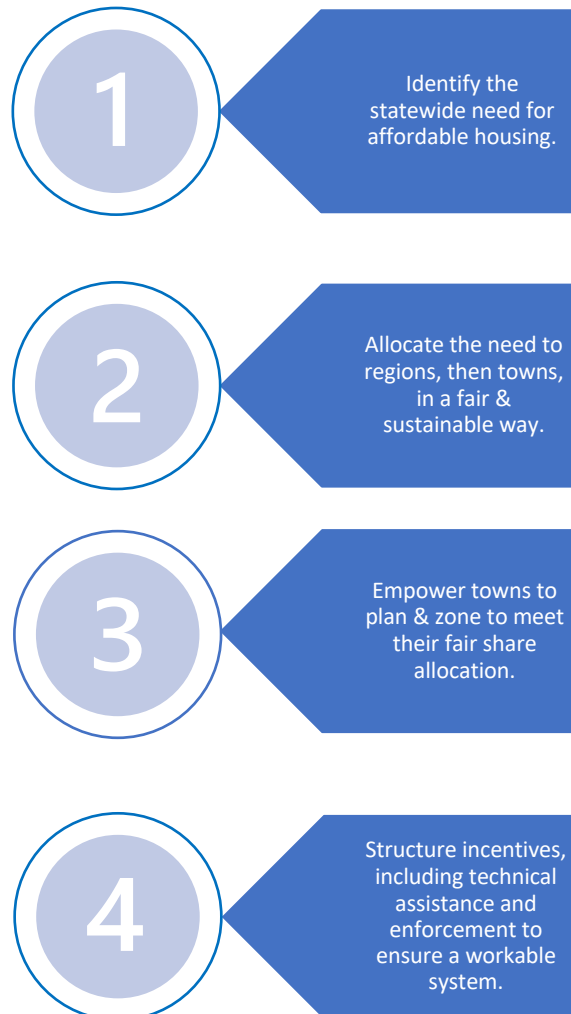
Fair Share Planning & Zoning (“Fair Share”) is a statewide land use reform proposal that envisions each municipality playing a role in fostering the production of housing that is within reach for Connecticut’s housing-burdened families.

Under Fair Share, each municipality will be responsible for setting the stage for its “fair share” of housing units to meet the statewide need. Using reliable data on regional housing need, each municipality will have a numerical housing target around which it can design its planning and zoning.

Through a points-based bonus system, cities and towns will have incentives to zone and plan for certain types of affordable housing that is currently in particularly short supply, such as housing for lower-income renters, elderly people, and families with children.

Drawing from the productive program in New Jersey, but designed around Connecticut’s unique needs, Fair Share will increase housing development – in a manner that follows municipal plans, lower rents, lessen residential segregation, strengthen cities and empower their residents of cities with more housing choices in cities and beyond – and position Connecticut to thrive economically.

Fair Share Step-by-Step




2. How is the need for affordable housing determined?

Thousands of Connecticut residents need a roof over their head, but even beyond households facing homelessness and housing instability, many struggling residents need a home that is better aligned with their income, a home big enough for their family, or a home in a neighborhood of their choice. Fair Share will help expand housing options, drive down costs, counteract housing displacement in cities, and ensure a broader range of housing choices, as well as help address homelessness.

People earning 80% or less of Area Median Income (about \$80,000/year for a family of four) and spending over 30% of their income on rent are generally considered “housing cost-burdened.” Households earning 30% of Area Median Income (about \$30,000 for a family of four) and spending 50% on housing costs are deemed “extremely housing cost-burdened.” Based on a 2020 study commissioned by OCA, there are roughly 135,000 Connecticut residents who are extremely housing cost-burdened. OCA’s recommendation is that this figure be used as a *proxy* for the number of units of housing, affordable up to 80% of median income, towns plan and zone to be produced over 10 years.¹

Need: Low Income and Cost Burdened Households			
	Households	Cost Burdened (paying more than than 30% of income on housing)	Severely Cost Burdened (paying more than 50% of income on housing)
Households	1,354,715	474,040	220,695
Below 80% AMI	570,270	376,850	208,130
Below 50% AMI	386,670	293,940	188,010
Below 30% AMI	214,745	167,495	135,740

Conservative recommendation for a *proxy* of the need for affordable housing to generate a statewide production goal.



¹ Note that in its definition of “affordable housing” that needs to be planned and zoned for, the Fair Share model proposed for Connecticut uses state median income rather than area median income. This is for simplicity, but also to ensure that the exceptionally high housing prices in some parts of the state do not put even “affordable housing” out of reach for moderate- and lower-income residents.

3. How has Fair Share worked in New Jersey?

To date, the Fair Share system in New Jersey, known as “Mt. Laurel” for the Mt. Laurel series of cases from which it evolved, has generated over 70,000 deed-restricted affordable units and 100,000 market rate units. In addition, there are

commitments from New Jersey towns to plan and zone for another 100,000 market-rate and 50,000 deed-restricted affordable units over ten years. While the effort to reform land use in New Jersey began decades ago, Connecticut can now reap the benefits of this system which has been honed over time in another state.

Housing Production in New Jersey Under Mount Laurel		
Time Period	Market Rate Units (in Inclusionary Developments)	Affordable Units
Current	100,000	70,000
Agreements Completed with Towns (over 10 years)	100,000	50,000

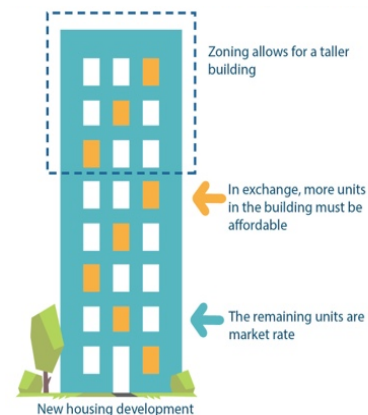
In New Jersey, the bulk of the new housing falls into two categories:

⇒ **Inclusionary developments**, which are housing developments with primarily market rate units, but also a smaller percentage of deed-restricted units representing 10-30% of the total units. The greater density allows the housing provider to rent a high enough number of market rate units to earn revenue sufficient to bear the cost of providing the much lower-rent deed-restricted affordable units, leveraging the private market to support deed-restricted units and saving taxpayers millions of dollars.

or

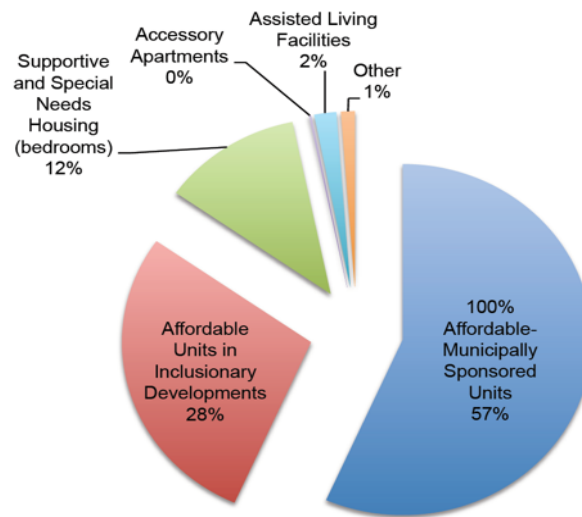
⇒ **Subsidized developments**, which are developments that have higher percentages of deed-restricted units and receive financial support from the government. Subsidized housing can also come in the form of smaller single-family homes typically developed by non-profit organizations such as Habitat for Humanity.

Example of an Inclusionary Development
Source: City of Denver



Between 1980 and 2014, 28% of the affordable units in New Jersey were in inclusionary developments, meaning that along with generating deed-restricted housing for moderate- and lower-income households, in New Jersey the fair share approach has generated tens of thousands of more moderately priced market rate housing. In Connecticut we need all types of units – subsidized, deed-restricted inclusionary, and moderately priced market rate – for current residents and to attract workers for the 100,000 jobs that are currently vacant.

64,744 Total New Affordable Housing Units Built in New Jersey, 1980-2014. Counted and Credited by NJ COAH



Prepared by David N. Kinsey, PhD, FAICP, NJPP, Kinsey & Hand, Planning, Princeton, NJ, with data provided by NJ COAH, December 2014

If we follow New Jersey's pattern of fair share development, we also anticipate that it will have a tremendous positive impact on the Connecticut economy. Applying models generated by the National Association of Homebuilders to create a generalized estimate, just the anticipated market units would likely generate at least \$47 billion in additional income for Connecticut residents, \$9.6 billion in state and local tax revenue, and 63,000 jobs.²

Projected Economic Impact of CT Fair Share Planning and Zoning (based on market rate units generated)	
Income for CT Residents	\$ 47.2 - 59 Billion
State and Local Tax Revenue	\$ 9.6 - 12 Billion
Jobs (FTEs sustained for 10 years)	63,439 - 79,299

² The OCA estimate is based on a range of 80%-100% production (to allow for bonus point discounts) of market rate units, assuming a third of the Fair Share deed-restricted affordable units are built in inclusionary developments where they represent 20% of the total units. The National Association of Homebuilders estimates can be found in *Housing Policy Department, The Economic Impact of Home Building in Connecticut: Income, Jobs, and Taxes Generated*, April 2019, available at https://assets.nationbuilder.com/opencommunitiesalliance/pages/877/attachments/original/1677536057/NAHB_2019_The_Economic_Impact_of_Home_Building_in_CT.pdf?1677536057

4. Is the goal really to create 135,000 units of housing affordable to households at 30% of Area median income?

No. The Fair Share Planning & Zoning proposal does not envision the production of 135,000 new units of housing affordable to extremely low-income households. Instead, the 135,000 figure is a starting point for the number of affordable units needed overall, which serves as a *proxy* for municipal affordable housing goals.

Starting with this initial proxy, additional adjustments are made to arrive at each municipality's Fair Share Allocation. The Fair Share proposal is designed to ensure that municipal growth occurs at a reasonable pace, so no municipality is expected to grow by more than 20% as the result of "Fair Share" affordable units – a ceiling most towns in Connecticut will likely not come close to in their Fair Share design. With the 20% limitation, the proxy for the total Fair Share units that would need to be planned and zoned for is reduced to 120,000 units. In practice, depending on choices each town makes, most towns will not grow by more than 1.5% a year in affordable units and many will be substantially below that.

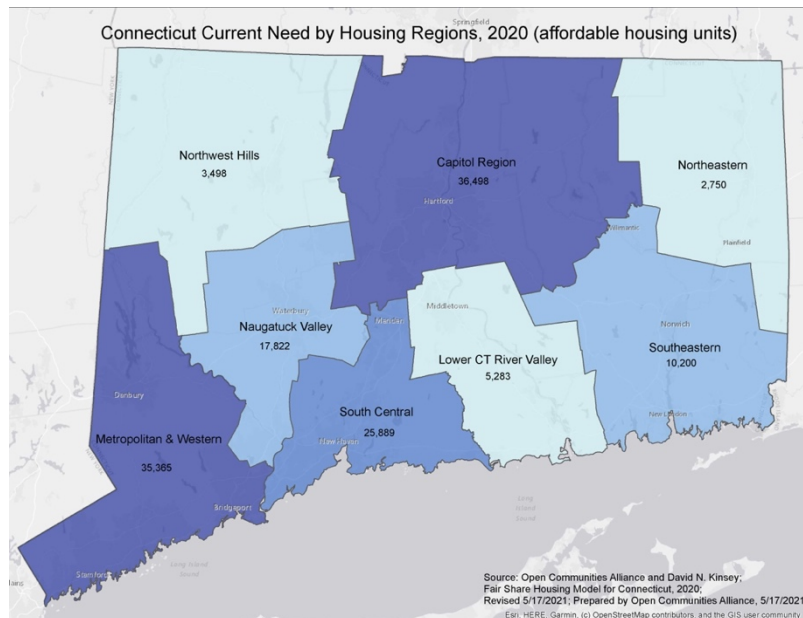
In addition, even though the basis for municipal targets is the number of families at 30% of median income paying more than one-half or more of their incomes towards housing costs, this becomes a proxy number for the production goal of housing affordable to families with incomes up to 80% of median income. There are a few reasons it is appropriate to translate this need into a proxy.

- (1) **Prices for Moderately Priced Housing Will Come Down.** If you infuse the Connecticut housing market with 120,000 new affordable units of housing, plus a significant number of market rate units in inclusionary developments, this sharp increase in supply is likely to lower housing costs overall, including – and especially – for the lowest income families.
- (2) **Housing Market Re-shuffle.** With new units, there will be a reshuffling in the housing market as households move to housing that better aligns with their incomes. Seniors will downsize to new affordable market rate or deed-restricted units, moderate income families will move from deeply affordable housing to somewhat more expensive housing, etc.
- (3) **Leveraging the Private Market.** In New Jersey, almost a third of the deed-restricted affordable units are located in "inclusionary developments" that typically include 80% or 85% market rate units. With these additional market rate units, likely to be in less expensive multifamily housing, families with median incomes from 80% but 120% (or maybe even more) will have additional housing choices, taking the pressure off of the state's stock of deed-restricted and subsidized housing.

5. How is the Regional Fair Share determined?

Connecticut's Zoning Enabling Act requires the affordable housing need to be determined on a regional basis by planning region. For this reason, OCA's recommended approach uses the planning regions prescribed in CGS Sec. 4-124i, which are Connecticut's regional Council of Government (COG) regions. The one exception is that, for equity reasons, the Metropolitan and Western COG regions are combined.

Using these regional breakdowns, the model then totals the number of households in each town in the region that have an income of 30% of median income or below and are paying more than half of that income towards housing costs. Using this approach, each region is only expected to be planning and zoning for the need that already exists in its area.



6. How is housing need handed out to towns?

The state's law governing the delegation of zoning powers from the state to municipalities, CGS Sec. 8-2, also known as the Zoning Enabling Act, provides a roadmap for the appropriate allocation of affordable housing need.

To begin with, it requires municipal zoning policies to expressly allow for housing that assists with meeting the state's housing needs, which includes the needs of the state's lower income households, and to "provide for the development of housing opportunities... for all residents of the municipality and the planning region in which the municipality is located...."

The statute also specifically requires municipal zoning to "promote housing choice and economic diversity in housing, including housing for both low- and moderate-income households" and allow for multifamily housing.

Allocation Factors

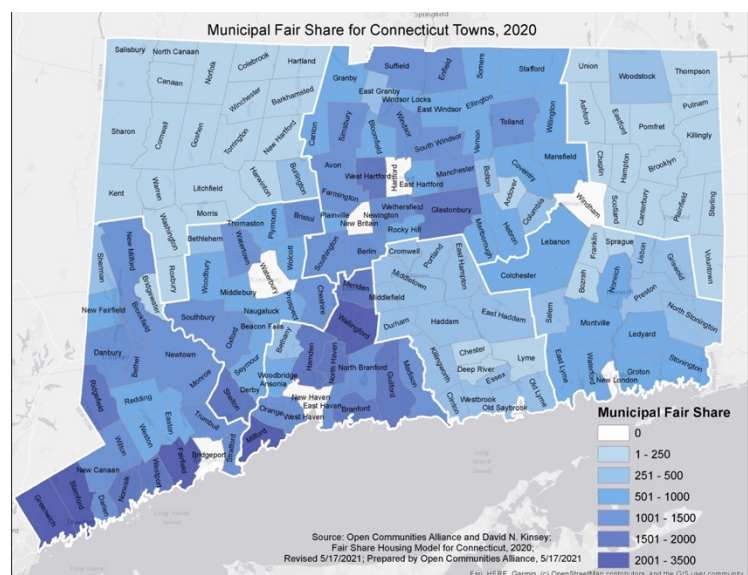
Fair share responds to each of these obligations, and incorporates sound planning principles, by allocating the need for affordable housing among municipalities based on four criteria:

Median Income	<ul style="list-style-type: none"> Connects to the obligation that municipalities include housing for low and moderate income households.
Wealth (grand list)	<ul style="list-style-type: none"> Reflects municipal capacity.
Multifamily Percentage	<ul style="list-style-type: none"> Responds to the obligation to permit multifamily housing.
Poverty Rate	<ul style="list-style-type: none"> Provides a measure of whether housing exists for low income families and promotes housing choice and economic diversity, as required by the Zoning Enabling Act.

These factors are then compared to other towns within the region to generate a ranking that measures each town's proportion of the overall total for each indicator as a percentage. To create an apples-to-apples comparison, the multifamily and poverty rate figures are flipped to express the percentage of housing that is *not* multifamily and the percentage of residents who are *not* in poverty. These percentages are then averaged and multiplied by the total regional affordable housing need to generate a Gross Municipal Fair Share Allocation.

Adjustment Factors

Two additional adjustments are then made. First, the Gross Municipal Fair Share Allocation is adjusted to absorb the need that would otherwise be allocated to municipalities with a poverty rate of over 20%, because those areas are already providing their fair share. Second, as referenced above, a Transitional Adjustment Factor, capping the total allocation at 20% of dwelling units in the town is applied to ensure that no municipality is expected to grow by more than 20% in affordable units over ten years.



Municipal Fair Share Allocations (not including a potential 20% reduction resulting from bonus points)

Creating a Municipal Fair Share Goal

Municipalities then take their Municipal Fair Share Allocation and convert it into their own Municipal Fair Share Goal through their own planning and zoning process, working towards achieving the total number of points equivalent to the Fair Share Allocation.

Threshold Requirements: As municipalities work to design their updated planning and zoning, certain threshold requirements are applied to make sure that each municipality is helping to provide the most needed housing, which, but for decades irrational zoning restrictions, would have been built in a wider range of Connecticut communities. The threshold requirements are as follows:

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| <ul style="list-style-type: none"> • Income Targeting: <ul style="list-style-type: none"> • At least half of units must be affordable to households at 30%-50% median income (at or below ~ \$50,000 a year for a family of four). <ul style="list-style-type: none"> ⇒ This includes a sub-requirement that 13% of all units are affordable for households 30% median income or below. • No more than half of units can be affordable to households at 50%-80% median income (at or below ~ \$80,000 for a family of four, the highest threshold for “affordable” as defined under Fair Share). | <ul style="list-style-type: none"> • Ownership/Rental: <ul style="list-style-type: none"> • No more than 75% of units may be homeownership units. • Rental units must constitute at least 25% of units a municipality plans and zones for. • Age Restrictions & Bedroom Counts: <ul style="list-style-type: none"> • At least half of the units must be open to families & have two or more bedrooms. • No more than 25% of units can be restricted to Seniors. • No more than 20% of the units can be Studios & One Bedrooms. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Bonus Points: Municipalities are rewarded for planning and zoning for urgently needed housing with bonus points that can further reduce their Fair Share Allocation by up to 20%. These points are available, no more than one per unit, for:

- Housing affordable at the 30% median income and below level;
- Supportive housing units, and
- Units with 2+ bedrooms affordable at 80% median income and below.

Here are two case studies for how fair share would play out in different towns.

Case Study – Greenwich

Factor	Town Percentage
Percentage of Regional Grand List	20%
Percent of Total Regional Household Income	8% ³
Percent of Regional Population Above Poverty	4%
Percent of Regional Single-Family Housing	3.6%

Greenwich Fair Share Calculation Step-by-Step

- ⇒ **Average the Factors:** These four percentages are added together and divided by four, yielding 9.1%.
- ⇒ **Multiply Fair Share Allocation by the Average:** This is multiplied by the Regional Fair Share Allocation of 35,365 units to generate a figure of 3,226.
- ⇒ **Adjust for High Poverty Towns:** This is adjusted to account for units reallocated from towns in the region that have poverty rates of 20% or greater, so increases slightly to 3,304.
- ⇒ **Transition Adjustment** (if greater than 20% of housing stock): N/A
- ⇒ **Reduce for Bonus Points:** If updated planning and zoning produces enough units qualifying for bonus points (30% median income and below, supportive housing, or 2+ bedroom units) Greenwich can reduce its Fair Share Goal by 20%, down to 2,643.
- ⇒ **Final Annual Goal:** 264 units each year for 10 years. This would be an annual affordable housing growth rate of about 1.03% of Greenwich's overall housing stock.

³ This includes two household income measures, one of which is weighted by number of households.

Case Study - Tolland

Factor	Town Percentage
Percentage of Regional Grand List	1.6%
Percent of Total Regional Household Income	3.2% ⁴
Percent of Regional Population Above Poverty	2.7%
Percent of Regional Single-Family Housing	3.7%

Tolland Fair Share Calculation Step-by-Step

- ⇒ **Average the Factors:** These four percentages are added together and divided by four, yielding 2.7%.
- ⇒ **Multiply Fair Share Allocation by the Average:** This is multiplied by the Regional Fair Share Allocation of 36,498 units to generate a figure of 993.
- ⇒ **Adjust for High Poverty Towns:** This is adjusted to account for units reallocated from towns in the region that have poverty rates of 20% or greater, so increases slightly to 1,069.
- ⇒ **Transition Adjustment** (if greater than 20% of housing stock): Because this is over 20% of Tolland's occupied units, it is reduced to that 20% cap and becomes 1,039.
- ⇒ **Reduce for Bonus Points:** If updated planning and zoning produces enough units qualifying for bonus points, Tolland can reduce its Fair Share Goal by 20%, down to 831.
- ⇒ **Final Annual Goal:** 83.1 units each year for 10 years. This would be an annual affordable housing growth rate of about 1.5% of Tolland's overall housing stock.

⁴ This includes two household income measures, one of which is weighted by number of households.

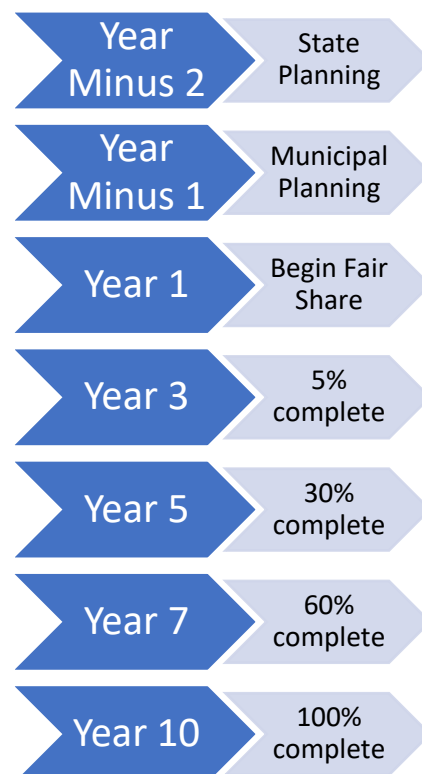
7. What will be required of municipalities? Will they be required to pay for new housing?

Cities and towns will need to meaningfully and effectively plan to meet their Fair Share goal and adjust their zoning to align with their plan. They will not need to pay for or build housing themselves unless they decide that is their strategy for meeting their Fair Share Goal. The experience in New Jersey is that more inclusive zoning and less red tape will kick-start the market. Municipalities may also support affordable housing development by creating land trusts, donating public land, and creating or partnering with local housing authorities.

8. How long does a municipality have to reach its Fair Share Goal? Are there benchmarks?

Each municipality has ten years to reach its Fair Share Goal and the clock does not start ticking until two years after the law goes into effect to allow for state and municipal planning. A municipality can fall out of compliance if it does not reach certain set percentages of its Fair Share Goal by designated benchmarks as indicated by Certificates of Occupancy for completed qualifying units.

Fair Share Benchmarks



9. What should a municipality's zoning and planning process look like? How does Fair Share interact with 8-30j Affordable Housing Plans?

Each town or city will have two years from the bill's effective date to develop a plan that meaningfully and effectively encourages affordable housing development. With such a plan, municipalities will retain all the same tools and authority they currently have; they'll simply have new incentives to use those powers to address the state's housing crisis – and support the growth of their own local economy. These powers will be coupled with technical assistance and guidance from the state to help them meet their new planning obligations.

Towns can adopt a variety of creative strategies to reach their own vision for their Fair Share Goal. These include but are not limited to:

- Inclusionary zoning
- "Missing middle" (w/ some deed-restricted units; on or off sewer)
- Larger multifamily housing
- Increasing density
- Subsidized housing (rental & homeownership)
- Affordable housing trust funds
- "Transit Oriented Development"
- Accessory dwelling units

Fair Share
Goal

Fortunately, as the result of the CGS Sec. 8-30j affordable housing plan process that went into effect in 2017, towns already have a jump on the planning process. Fair share augments this by providing more guidance and a concrete unit goal. Our recommendation is that Fair Share Planning & Zoning replace the 8-30j process and be incorporated into the municipal Plan of Conservation and Development process to the greatest extent possible without delaying implementation of Fair Share.

As is the case now under CGS Sec. 8-30g, towns and cities will need to demonstrate they have made progress towards their goal through reporting to the Department of Housing.

10. How will Fair Share unit goals be enforced?

Virtually every public policy priority we care about is put into law and includes an enforcement mechanism – consider workplace safety, drunk driving prevention, and environmental protection to name just a few. The stronger the law, the more likely it is to be followed. Without enforcement, laws would be disregarded and the public interest would not be served.

Meeting our affordable housing needs is a similar public interest and yet there is not a system with any kind of enforcement designed to ensure that municipal planning and zoning generates the level of affordable units we need. The one law we do have, CGS Sec. 8-30g, which can only be enforced by developers, is critically important, but was never intended to be the state's only tool. Furthermore, it has not prompted municipalities to make the necessary adjustments to planning and zoning needed to meet the conservative estimate for 135,000 units of affordable housing.

Towns can Avoid Enforcement

Under Fair Share, a municipality is only subject to enforcement if it does not create an effective Fair Share Plan. If the municipality does not have such a plan, which should be rare, there are two enforcement mechanisms:

- ⇒ Commonsense default zoning, and
- ⇒ Legal enforcement

A municipality is considered to have an effective Fair Share Plan if:

- (1) It has submitted a Fair Share Plan designed to reach its 10-year Fair Share Goal to the Office of Policy and Management in a timely manner, and
- (2) Its planning and zoning produces housing to meet the 3, 5, 7, and 10-year Fair Share benchmarks.

Default Zoning

If a municipality does not have an effective Fair Share Plan, common sense zoning becomes effective until it creates and implements an effective plan. Default zoning, primarily intended to inspire a municipality to do its own planning, includes:

- **In areas with water and sewer:** For areas with public water and sewer utilities, developments with no more than 20 units per acre are permitted if they meet one of two sets of criteria:
 - *20% Developments.* Twenty percent of the units:
 - Have two or more bedrooms,
 - Are not age restricted, and
 - Are affordable to households at 80% median income.
 - *10% Developments.* Ten percent of the units:
 - Have two or more bedrooms,
 - Are not age restricted, and
 - Are affordable to households at 80% median income.

- **In areas without water and sewer:** In areas without water and sewer, small-scale development is permitted if:
 - The greater of 1 unit or 10% of units are:
 - Two or more bedrooms, and
 - Affordable to households at 80% of median income.
 - The development does not exceed what is permitted by the public health code.

Municipalities may still require an administrative permitting process for developments proposed using default zoning as they would for developments conforming with the underlying zoning for the area. A municipality may challenge the building of a development on the grounds of health, safety or other considerations permitted through the zoning process, at the point when a developer or landowner attempts to make use of default zoning.

Legal Enforcement

If a municipality does not have an effective Fair Share Plan, it may be sued by an ‘interested party’ and

- Compelled to develop a plan that creates a realistic opportunity to reach its Fair Share Allocation and/or
- Required to permit certain kinds of affordable developments.

An “interested party” is either a nonprofit organization that represents low-income households or addresses their housing needs, or a housing developer who seeks to construct certain kinds of developments that include affordable units.

There are two types of proposed developments that trigger the fair share enforcement process.

- *An 8-30g-qualifying development:* If denied through the regular zoning process, developments that conform to 8-30g in its current form can trigger the enforcement rights of developers. These include:
 - Assisted housing (as defined by 8-30g) or
 - Developments in which 15% of units are affordable at 60% median income or below and 15% affordable at 80% or below.
- *20% Deed Restricted:* Developments that include 20% of deed-restricted non-age-restricted units if:
 - 5% of all units affordable at 30% median income or below and
 - 15% affordable at 80% median income or below.

Importantly, if a developer opts to challenge the zoning denial of a particular qualifying proposal, they must automatically challenge the municipality’s Fair Share Plan or lack thereof.

Remedies

If, as the result of litigation, a State Court finds that a municipality does not have an effective Fair Share Plan, it can order it to complete a new plan that creates, in the court’s judgment, a realistic opportunity for the development of the municipality’s Fair Share Allocation. In addition, if a developer has challenged the denial of a particular qualifying housing development and there are not health, safety or other zoning-appropriate justifications for its denial, the court may order that the municipality allow the development to be built. Fee shifting is available if there is a ruling against the municipality.

Challenging the Fair Share Allocation and Process

There are three opportunities for municipalities to challenge their Fair Share allocation:

- At the time when a developer seeks to avail themselves of default zoning;
- When the municipal Fair Share Plan – or lack of plan – is challenged, and
- When a developer who proposes a qualifying development that has been rejected by the municipality’s zoning authority brings an action against the municipality.

11. How will Fair Share interact with 8-30g?

The most important concept to understand about how 8-30g and Fair Share interact is that by Year 5 of the implementation of Fair Share, with effective Fair Share Plans producing housing in accordance with the benchmarks, 67% of Connecticut municipalities will achieve a moratorium from 8-30g, and some will reach a moratorium in under two years. By Year 7, 93% will qualify for a moratorium.

What is 8-30g?

The Affordable Housing Appeals Act or CGS Sec. 8-30g is a state law that gives a developer of mixed income housing a modest leg up in court if their proposal is rejected by a municipality with less than 10% of its housing stock qualifying as affordable under the statute. Rather than the developer having to prove that the municipality did something wrong, the municipality must demonstrate that it made its decision based on sound public health or safety reasons or other legitimate grounds that can be considered by a municipal zoning authority.

This law, which has been on the books for over 30 years, is often mistakenly interpreted to be incentivizing towns to strive to reach the 10% affordable threshold, but in fact, that 10% figure is simply intended to ensure the law applies only to municipalities with lower levels of affordability.

8-30g Moratorium

A separate mechanism under 8-30g allows for a four- to five-year moratorium from the possibility of legal action if a municipality demonstrates meaningful progress in creating affordable housing. A municipality is eligible for a moratorium if it shows it has added affordable housing representing the greater of 2% of its housing stock or 75 Housing Unit Equivalent points (a separate point system that allows additional and partial points for certain kinds of housing.) Currently, about 31 municipalities are exempted from this law and another four (Westport through March 2023, Milford, Suffield, and Brookfield) have a moratorium.

Intersection of 8-30g and Fair Share

Under Fair Share, at least according to OCA's estimates, 23 towns who are currently exempt from CGS Sec. 8-30g would still have a Fair Share Allocation which, combined, totals about 19,000 units. All municipalities that are excluded from Fair Share because their poverty rates are over 20% are already exempt from 8-30g.

As discussed above, an effective Fair Share Plan will mean that municipalities quickly reach affordable housing production numbers that will qualify them for an 8-30g moratorium, giving them full control over housing production within the Fair Share guidelines. Fair Share is designed to ensure that every town is helping the state meet its affordable housing needs while also ensuring local input is guiding development.

Municipalities Exempt from 8-30g with Fair Share Allocations	
Municipality	# of Additional Fair Share Units over 10 Years for Towns @ or above 8-30g 10%
Bloomfield	996
Bristol	1,354
Danbury	1,297
Derby	599
East Hartford	956
East Windsor	755
Enfield	1,161
Groton	937
Killingly	207
Manchester	1,264
Meriden	1,530
Middletown	360
North Canaan	97
Norwalk	1,738
Norwich	569
Plainfield	217
Putnam	136
Stamford	2,443
Torrington	199
Vernon	821
West Haven	1,428
Winchester	130
TOTAL Units	19,193

12. Feasibility – Water and Sewer Infrastructure, Public Utilities, Environment, and Education

The current Fair Share proposal outlines a high level process for assessing the need for affordable housing and allocating it to municipalities. Within that allocation process, infrastructure considerations, particularly those tailored to the individual circumstances of different municipalities, can be included. That said, there is much that can be done within the confines of our current infrastructure – in places with and without meaningful water and sewer systems.

Areas without Water and Sewer Infrastructure

Many towns have a lot of room to grow, even in areas that lack public infrastructure and rely on private septic systems and wells. There are two core strategies towns without significant water and sewer infrastructure can use to expand their affordable housing stock.

- **Gentle Density:** The Connecticut Department of Public Health measures onsite septic safety based on the number of bedrooms in a dwelling, and has previously indicated (in informal guidance) that up to six bedrooms per acre can be built before more intensive environmental analysis is needed, though that number does vary based on site-specific factors.⁵ This is nowhere close to the level of density that many Connecticut towns primarily relying on private well and septic services are currently built out to.⁶
- **Community Septic Systems** Technology has come a long way since Connecticut's water and sewer networks were first built out, and there are a number of advanced alternatives to traditional centralized public water and sewer infrastructure that towns can now take advantage of. For example, community septic systems are a "cost-effective, efficient, and effective" option that can be used to build at intermediate densities.⁷ There are a number of examples already built in Connecticut, including one in Newtown that serves 49 two-bedroom houses.⁸

Case Study: Washington, CT

Washington, CT in Litchfield County is largely zoned for single-family residential and has no public water or sewer to speak of. Current residential density in Washington based on available state and local data is only one bedroom for every two acres, or one unit for every six and a quarter acres. *Based on the town's own estimates in its POCD, Washington could support at least 2,300 more housing units if built out to capacity without expanding infrastructure.* Washington's Fair Share Allocation is only 208 units, which could be reduced to 166 with bonus points.

⁵ Conn. Dep't of Pub. Health, DEH Circular Letter 2000-01 at 2 (Jan. 13, 2000), https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/environmental_engineering/pdf/CIR200001SewageUpdatespdf.pdf (recommending that local health departments conduct soil nitrogen analyses at densities greater than 1 bedroom / 0.167 acre).

⁶ For Washington, CT Case Study the Plan of Conservation and Development citation is: *Town of Washington 2014 Plan of Conservation and Development*, Washington Planning Comm'n (Apr. 1, 2015), https://www.washingtonct.org/sites/g/files/vyhlif1396/f/file/file/washingtonct2014pocd_o.pdf

⁷ Kyle Massner, *Community Septic Systems*, Sustainable Dev. Code, <https://sustainablecitycode.org/brief/allow-community-septic-systems>.

⁸ *Id.*

Areas with Water and Sewer

For towns that do have substantial existing infrastructure, there is even more potential for growth.

- **Missing Middle Housing.** Other states across the country have already allowed “missing middle” or denser multifamily housing to be built regardless of whether or not there is already infrastructure in place.

Massachusetts passed a law in 2021 requiring local communities near mass transit to allow multifamily housing of up to 15 units per acre as-of-right near stations, subject to general state public health requirements, whether or not there is public water and sewer.⁹ The implementing guidelines for this law stated that “compliance with [the law] does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future multi-family housing production within the multi-family zoning district. *In most cases, multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards.*” The report went on to add that where public systems currently exist, but capacity is limited, private developers may be able to support the cost of expanding capacity.¹⁰

- **Private Developer Investment:** A good bit of the cost of new public infrastructure can also be carried by private developers, who will pay to extend out connections to existing networks.¹¹ New water and sewer utilities will also help pay for themselves over time because they are financed in part by user fee revenues from properties that use their services. Plus, expanding utilities will drive new development that will help grow towns’ grand lists, helping to further offset costs.

Case Study: Darien, CT

Over 70% of Darien is serviced by public sewers,¹ yet the town only had 7,265 housing units in 2020, at an average density of 1.36 units per acre based on the town’s total residential land area.¹ This is nowhere close to the level of density that land served by public water and sewer utilities can handle. Even if the town only allowed multifamily housing at “gentle densities” of 15 to 20 units per acre in 20% of its sewered area and higher density housing of 40 units per acre in another 5%, it easily has enough infrastructure capacity to meet its Fair Share goal of 1271 representing an annual growth in affordable units of 1.4% of its housing stock over 10 years.

⁹ Mass Gen. Laws ch. 40A, § 3A (2023), <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section3A>.

¹⁰ *Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act*, Mass. Dep’t Hous. & Cmty. Dev. 109 (Oct. 21, 2022), <https://www.mass.gov/doc/compliance-guidelines-for-multi-family-zoning-districts-under-section-3a-of-the-zoning-act/download>.

¹¹ Cal. Planning Roundtable, *Myths and Facts about Affordable & High Density Housing*, Cal. Dep’t Hous. & Cmty. Dev. 4 (2007), <https://www.losgatosca.gov/DocumentCenter/View/2716/Myths--Facts-about-Afford--Hi-Density-Housing>.

Other Feasibility Considerations

Even after deploying these strategies to increase affordable housing in areas with and without water and sewer, there are still a number of other factors to consider when assessing the feasibility of undertaking a Fair Share Plan.

- **Public Utilities:** It's true that significant housing expansion may require building out at least some new public utilities, and there is no guarantee that solving Connecticut's housing crisis is doable without any municipal investment whatsoever. While it is possible for towns to meet their Fair Share goals without spending a fortune on new water and sewer pipes, just as with other kinds of development, such as single-family subdivisions, municipalities should still be expected to make reasonable efforts to expand their services in order to accommodate growth, and shouldn't be allowed to use infrastructure as a backdoor excuse to justify no new housing. The state should be supportive of these efforts, as has been the case in other states.¹²
- **The Environment:** Opponents of affordable housing often raise environmental concerns to justify restrictive zoning. Such arguments are usually red herrings. More often than not, denser housing and better planning support environmental protection.
 - **Public Health Code Protection:** As discussed above, multifamily housing can be safely built off public water and sewer without hurting the environment. Environmental impacts of density are already addressed by the Public Health Code, which sets different standards for single-family and multifamily homes based on the number of bedrooms in the structure.¹³ If development would fall above safe limits, the Public Health Code simply won't allow it to be built.
 - **Density Helps the Environment:** Building more densely is in many ways *better* for the environment. The federal Environmental Protection Agency has recognized that denser residential development helps preserve natural resources and avoid runoff from impervious coverage by reducing suburban sprawl.¹⁴ Increasing residential density in already-built-out areas can help avoid environmentally intensive "greenfield" development of new suburban subdivisions. Even in towns that are more rural and further away from major population centers, building new housing in more compact, multifamily-built forms can help preserve these towns' natural resources and open space by avoiding the need to drive development onto new large lots.

¹² For example, Massachusetts offers more favorable lending terms on state financing for water and sewer projects to communities that have taken steps to build more housing. *Housing Choice Designation*, Mass.gov, <https://www.mass.gov/info-details/housing-choice-designation>.

¹³ See *On-site Sewage Disposal Regulations and Technical Standards for Subsurface Sewage Disposal Systems*, Conn. Dep't Pub. Health 28 tbl.5 (Jan. 2023), https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/environmental_engineering/2023-uploads/TS-Master-2023-1242023.pdf.

¹⁴ U.S. Env't Prot. Agency, EPA 231-R-06-001, *Protecting Water Resources with Higher-Density Development* (2014), <https://www.epa.gov/smartgrowth/protecting-water-resources-higher-density-development>.

- **Public Education:** Every student in Connecticut, regardless of income, is entitled to an adequate education, and all municipalities need to play a role in fulfilling that obligation with assistance from the state. Fair Share will create more equitable education in Connecticut in a way that benefits all families and the state as a whole.
 - **Increased Grand Lists = More Resources for Schools.** Depending on how municipalities decide to reach their Fair Share Goal, they could generate more local tax revenue as the result of additional housing developments and new businesses serving an expanded population.
 - **State Educational Funding Formula:** To the extent that municipal school systems host children qualifying for additional funding under the state’s Educational Cost Sharing Formula (children who are learning English, are from economically disadvantaged backgrounds or live on poverty-concentrated areas), they will get an increased state contribution to their public school costs.¹⁵ Note that research from the Century Fund has concluded that low income children achieve improved academic outcomes in mixed income educational settings – for less per pupil expenditures.¹⁶
 - **Benefits of Diversity:** Fair Share will help to make educational opportunities across Connecticut more equitable. While some schools in historically exclusive towns may find that the size and/or demographics of their student populations shift slightly as a result of this legislation, this is a good thing. With our nation becoming increasingly diverse, it is critical that all Connecticut’s school children, including those living in more expensive suburbs, be culturally competent. Diverse school settings allow that. In addition, numerous studies have demonstrated that all children learn better when permitted to interact with classmates of different backgrounds.¹⁷

¹⁵ For more on the state’s Educational Cost Sharing formula, see the School and State Finance Project’s Educational Cost Sharing Formula webpage at <https://schoolstatefinance.org/issues/ecs-formula>.

¹⁶ See Heather Schwartz, *Housing Policy IS School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County*, Maryland, Century Fund, 2010. Available at <https://production-tcf.imgix.net/app/uploads/2010/10/16005437/tcf-Schwartz-2.pdf>.

¹⁷ Roslyn Arln Mickelson, *School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence*, National Coalition on School Diversity, Research Brief No. 5, 2016. Available at <http://www.school-diversity.org/pdf/DiversityResearchBriefNo5Oct2016Big.pdf>.

- **Increasing Educational Opportunity.** Schools in Connecticut remain largely segregated by race, with whiter, wealthier schools having access to significantly more funding and resources than schools in poorer, more diverse areas. This discrepancy in resources correlates with a documented gap in educational outcomes that suggests the status quo is systematically failing kids in less affluent towns. By encouraging a more equal distribution of affordable housing across the state, the Fair Share bill will help to increase opportunities for kids of all backgrounds to access resource-rich, high-performing schools, and relieve some of the pressure on under-resourced, over-burdened schools and educators in the state.

Conclusion

Fair Share Planning and Zoning offers Connecticut a future with sustained economic growth, housing affordability, and housing options that break out of the restrictions of our segregated past. It will set the stage for our cities to thrive. The Fair Share strategy is the realization of our existing zoning requirements and are grounded in the success of another state in our region, New Jersey.